



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MND MNSD FF

### Preliminary Issues

The Tenants affirmed that they did not receive the Landlord's most recent submission of evidence which included two e-mails between the Landlord and a cleaning company, Canada Post receipts, a receipt for services provided by the cleaning company, and the Landlord's cover letter listing these documents. The Landlord affirmed that that shipment of evidence was sent via registered mail January 2, 2013 as supported by the Canada Post receipts provided in her written submission.

After I explained what was in the evidence listed above each Tenant advised that they wished to proceed with this hearing even though they had not received the aforementioned documents.

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for: damage to the unit, site, or property; to keep all or part of the security deposit, and to recover the cost of the filing fee from the Tenants for this application.

The parties appeared at the teleconference hearing, acknowledged receipt of specific pieces of evidence and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the Landlord be awarded a Monetary Order?

Background and Evidence

The Landlord submitted documentary evidence which included, among other things, copies of: various e-mails; Canada Post receipts; a Notice to end tenancy; photos of the rental unit; information from the previous tenant; a carpet repair receipt; a receipt for cleaning; letters written between the parties; and a Monetary Order Worksheet.

The Tenants submitted documentary evidence which included, among other things, copies of: their written statement; e-mails sent to the Landlord; photos of the rental unit taken September 22, 2012 and September 25, 2012; a letter providing the Landlord their forwarding address; and Canada Post receipts.

The following facts were not in dispute:

- The parties entered into a month to month tenancy that began on June 1, 2011; and
- Rent was payable on the first of each month in the amount of \$1,450.00; and
- On June 1, 2011 the Tenant's paid \$725.00 as the security deposit; and
- No move in condition inspection report was completed; and
- No move out condition inspection report was completed; and
- The tenancy ended after the Landlord served the Tenants Notice to end the tenancy for landlord's use with an effective date of September 30, 2012;
- The Landlord received the Tenant's e-mail of September 20, 2012 advising the Landlord they would moving their possessions on Friday September 21, 2012 and would return to finish the cleaning by the end of that weekend.

The Landlord argued that the Tenants vacated the property before the end of the month and that they attended her home on September 26, 2012 to return the keys and to get her to sign a paper saying the rental unit was left clean. She refused to sign the paper because she had entered the unit and seen that it was not clean and had some damage. She told the Tenant that she would arrange for her friend to do the move out inspection with the Tenant that following weekend; however the Tenants did not attend.

She later mailed the Tenants a written notice of move out inspection as provided in her evidence.

The Landlord withdrew and reduced portions of her claim listed on the Monetary Order Worksheet and stated she wished to proceed with the following claim:

- \$174.72 for cleaning the rental unit as supported by the invoice provided in her evidence. She confirmed she hired a company who cleaned the unit on October 23, 2012 as the Tenants left it very dusty and without vacuuming the carpets
- \$120.00 for the repair of a carpet snag that occurred during the tenancy. The snag was located in the front bedroom and was repaired on October 10, 2012.
- \$180.00 for the cost to hire the Landlord's friend to act as her Agent in taking photos of the unit and scheduling a meeting with the Tenants for the move out inspection.
- Unknown costs to repair window latches on windows that were installed in 1982. The Landlord claimed the latches were broken during the tenancy, costs to get photocopies for her evidence, and for the cost to replace the appliance manuals which were taken by the Tenants.

The Tenants submitted that they attempted to return the keys and conduct the move out inspection several times between September 24 and 25<sup>th</sup>. They did not attend the Landlord's home on September 26, 2012 because the female Tenant was in a serious accident. They confirmed receiving a copy of the Landlords letter requesting a move out inspection however they did not receive it until October 2, 2012 and therefore could not attend the inspection she had scheduled for September 30, 2012.

The Tenants disagreed with the Landlord's claim for cleaning and pointed to the photos provided in their evidence which prove they left the unit clean. They questioned if the cleaning receipt pertained to another lower suite at this address as that tenant was scheduled to move out September 29, 2012.

The Tenants claim they did not damage the carpet and argued that the snag was so small they would not have noticed it had it not been pointed out by the Landlord. They are of the opinion that it was not snagged during their tenancy; however they confirmed that the Landlord pointed this out to them when they first attempted to return their keys.

The Tenants dispute the remainder of the Landlord's claims and advised that they never saw manuals for the appliances so could not have taken them. They pointed out that the previous tenant informed the Landlord that she left them "somewhere" in the unit but

did not clarify where. Furthermore they were never pointed out to them when they first moved into the unit.

The Tenants confirmed that all of the window latches were broken from the onset of their tenancy. They did not report that to the Landlord as there was no move in inspection and they simply worked with the issue as they were still able to open, close, and lock the windows.

### Analysis

A party who makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided for in sections 7 and 67 of the *Residential Tenancy Act*. Accordingly an applicant must prove the following when seeking such awards:

1. The other party violated the Act, regulation, or tenancy agreement; and
2. The violation caused the applicant to incur damage(s) and/or loss(es) as a result of the violation; and
3. The value of the loss; and
4. The party making the application did whatever was reasonable to minimize the damage or loss.

In this case the Tenants vacated the unit the weekend of September 24, 2012, prior to the effective date of the Notice to end tenancy; however, they did not provide the Landlord written notice that they were ending the tenancy early. Therefore, I find that this tenancy ended **September 30, 2012**, in accordance with the Notice to end tenancy issued by the Landlord. The Landlord received the Tenant's forwarding address, in writing, on October 2, 2012.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In this case, the Landlord has the burden to prove damages occurred during the course of the tenancy.

In the absence of condition inspection report forms the Landlord has relied on communications received from a previous tenant whereby the previous tenant states things she will do, such as leaving the appliance manuals. The Tenants disputed this evidence arguing that there is no proof that the former tenant did in fact do what she

said she would do. Furthermore, I accept the Tenants' argument that the snag in the carpet was so small they did not notice if it was there at the beginning of their tenancy.

Therefore, the only evidence before me to support damages occurred during the tenancy was disputed testimony which I find to be insufficient to meet the Landlord's burden of proof. Accordingly I dismiss the Landlord's claims for damages, without leave to reapply.

The remainder of the Landlord's claims pertains to costs incurred in conducting business as a Landlord such as wages to hire an Agent to Act on behalf of the Landlord or administrative costs to prepare evidence and mail it. I find that the Landlord has chosen to incur these costs which cannot be assumed by the Tenants. The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of the Act. Costs incurred due to hiring an Agent or their services to prepare and send evidence are not a breach of the Act. Therefore, I dismiss the balance of the Landlord's claim.

As the Landlord has not been successful with her claim, I find she must bear the burden of the cost to file her application.

The Landlord argued that the Tenants failed to attend her move-out condition inspection. Even if that were the case, I find the Landlord breached the Act first as she failed to arrange a move-in condition inspection and she failed to complete the condition inspection report forms and provide the Tenants a copy as required by the Act.

In such cases, I refer to the Residential Tenancy Policy Guideline 17 which provides that:

8. *In cases where both the landlord's right to retain and the tenant's right to the return of the deposit have been extinguished, the party who breached their obligation first will bear the loss. For example, if the landlord failed to give the tenant a copy of the inspection done at the beginning of the tenancy, then even though the tenant may not have taken part in the move out inspection, the landlord will be precluded from claiming against the deposit because the landlord's breach occurred first.*

In conclusion, the Landlord breached her entitlement to the deposits first. Thus, the Landlord was required to return the deposits to the Tenants within 15 days of the later, the date the tenancy ended (September 30, 2012) or the date the Landlord receives the Tenant's forwarding address (October 2, 2012).

The *Residential Tenancy Policy Guideline # 17* stipulates that unless the tenant has specifically waived the doubling of the deposit, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the unit and the landlord's right to make such a claim has been extinguished under the Act. Accordingly, I Order the Landlord to return double the Tenants' deposit forthwith, in the amount of **\$1,450.00**.

### Conclusion

The Tenants have been issued a Monetary Order in the amount of **\$1,450.00**. This Order is legally binding and must be served upon the Landlord. In the event that the Landlord does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 14, 2013

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Residential Tenancy Branch

